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9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12
13 UNITED STATES OF AMERICA,) CR No. **08-01088**
14 Plaintiff,) PLEA AGREEMENT FOR DEFENDANT
15 v.) FOSS THERAPY SERVICES, INC.
16 FOSS THERAPY SERVICES, INC.,)
17 Defendant.)
18

19 1. This constitutes the plea agreement between FOSS THERAPY
20 SERVICES, INC. ("defendant") and the United States Attorney's
21 Office for the Central District of California ("the USAO") in the
22 above-captioned case. This agreement is limited to the USAO and
23 cannot bind any other federal, state or local prosecuting,
24 administrative or regulatory authorities. The parties enter into
25 the following agreement pursuant to Federal Rule of Criminal
26 Procedure 11(c)(1)(C).
27
28

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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY 

FILED

1 PLEA

2 2. Defendant gives up the right to indictment by a grand
3 jury and agrees to plead guilty to a single-count information
4 charging defendant with conspiracy, in violation of 18 U.S.C.
5 § 371.

6 3. Defendant will appear for arraignment, enter its guilty
7 pleas, and appear for sentencing through its counsel of record,
8 authorized by resolution of defendant's Board of Directors, or
9 authorized corporate or company officer.

10 NATURE OF THE OFFENSE

11 4. In order for defendant to be guilty of count one,
12 which charges a violation of Title 18, United States Code,
13 Section 371, the following must be true: (1) beginning on or
14 about May 19, 2004, and continuing to on or about May 20, 2004,
15 there was an agreement between two or more persons to knowingly
16 make a materially false statement in a matter within the
17 executive branch of the United States Government; (2) defendant,
18 by and through its agents and employees, became a member of the
19 conspiracy knowing of at least one of its objects and intending
20 to help accomplish it; and (3) one of the members of the
21 conspiracy performed at least one overt act for the purpose of
22 carrying out the conspiracy. Defendant admits that defendant is,
23 in fact, guilty of this offense as described in count one of the
24 information.

25 Under well-established principles of corporate liability and
26 respondeat superior, as these principles apply in this case, the
27 defendant is liable for the actions of its agents and employees.
28 New York Central and Hudson River R.R. v. United States, 212 U.S.

481, 495 (1909); United States v. Beusch, 596 F.2d 871, 877 (9th Cir. 1979); United States v. Hilton Hotels Corporation, 467 F.2d 1000, 1004-07 (9th Cir. 1972).

PENALTIES

5. The statutory maximum sentence that the Court can impose on an organization for a felony conviction of 18 U.S.C. § 371, is a term of five years probation, pursuant to 18 U.S.C. § 3561(c)(1), a fine of \$500,000, pursuant to 18 U.S.C. § 3571(c)(3), or twice the gross gain or gross loss resulting from the offense, whichever is greatest, pursuant to 18 U.S.C. § 3571(d), and a special assessment of \$400, pursuant to 18 U.S.C. § 3013(a)(2)(B).

FACTUAL BASIS

6. Defendant and the USAO agree and stipulate to the statement of facts attached to this agreement as Attachment A. This statement of facts is sufficient to support a plea of guilty to the charge described in this agreement. It is not meant to be a complete recitation of all facts relevant to the underlying criminal conduct or all facts known to either party that relate to that conduct.

WAIVER OF CONSTITUTIONAL RIGHTS

7. By pleading guilty, defendant gives up the following rights:

- a) The right to persist in a plea of not guilty.
- b) The right to a speedy and public trial by jury.
- c) The right to the assistance of legal counsel at trial.
- d) The right to be presumed innocent and to have the

1 burden of proof placed on the government to prove defendant
2 guilty beyond a reasonable doubt.

3 e) The right to confront and cross-examine witnesses
4 against defendant.

5 f) The right to present evidence in opposition to the
6 charges, including the right to call witnesses and to subpoena
7 those witnesses to testify.

8 By pleading guilty, defendant also gives up any and all
9 rights to pursue any affirmative defenses, Fourth Amendment or
10 Fifth Amendment claims, and other pretrial motions that have been
11 filed or could be filed.

12 SENTENCING FACTORS

13 8. Defendant and the USAO agree and stipulate that,
14 pursuant to United States Sentencing Guidelines ("U.S.S.G.")
15 §§ 8C2.1 and 8C2.10, the sentencing guidelines are not applicable
16 in determining the fine for an organization.

17 9. Pursuant to U.S.S.G. §§ 8D1.1 and 8D1.2, defendant
18 shall be sentenced to a term of organizational probation for five
19 years, based upon the following factors set forth in 18 U.S.C.
20 § 3553(a): The nature and circumstances of the offense and the
21 history and characteristics of the defendant; and the need for
22 the sentence imposed to reflect the seriousness of the offense,
23 to promote respect for the law, to provide just punishment for
24 the offense, and to afford adequate deterrence to criminal
25 conduct. The parties recognize that the proposed sentence
26 reflects, among other things, the benefit to the USAO in
27 conserving resources by entering into a pre-indictment "package"
28 plea with defendant and co-defendants Joseph Shepherd and Richard

1 Foss.

2 The terms and conditions of probation shall be:

3 a. Defendant shall pay a total criminal fine of
4 \$50,000 as to count one of the information.

5 b. Defendant agrees that it shall commit no further
6 violations of federal, state, or local law.

7 c. If defendant changes its name, the renamed company
8 shall be obliged to meet all of the obligations of defendant
9 under this agreement. If defendant merges with another company
10 through a stock or asset purchase, the newly-created or merged
11 company shall be obliged to meet all of the obligations of
12 defendant under this agreement.

13 d. Defendant agrees to pay to the Clerk of the United
14 States District Court for the Central District of California on
15 the date of sentencing (or as soon as the Court is able to accept
16 the payment) the mandatory special assessment of \$400 pursuant to
17 18 U.S.C. § 3013(a)(2)(B).

18 DEFENDANT'S OBLIGATIONS

19 10. Defendant agrees that it will:

20 a) Plead guilty as set forth in this agreement
21 (provided, however, that defendant retains the right not to plead
22 guilty if prior to the scheduled change of pleading heading, the
23 United States Nuclear Regulatory Commission ("USNRC") issues an
24 order contrary to the terms described at sub-paragraph (g)
25 below).

26 b) Not knowingly and willfully fail to abide by all
27 sentencing stipulations contained in this agreement.

28 c) Not knowingly and willfully fail to: (i) appear for

1 all court appearances, and (ii) obey any other ongoing court
2 order in this matter.

3 d) Not commit any crime.

4 e) Not knowingly and willfully fail to be truthful at
5 all times with Pretrial Services, the U.S. Probation Office, and
6 the Court.

7 f) Pay the applicable special assessment at or before
8 the time of sentencing.

9 g) Not contest a USNRC order finding defendant violated
10 USNRC regulations in connection with the Model 5979 Type-B
11 Shipping Package ("5979 Package") on the following dates: July
12 2003, December 2003, and May 2004; and not contest a USNRC order
13 finding violations associated with the providing of inaccurate
14 information to SPEC regarding the 5979 Package (provided,
15 however, that the USNRC does not issue further violations related
16 to the shipment of the 5979 Package by SPEC in July 2003,
17 December 2003, and May 2004).

18 h) Agree to the limitations on the scope of work as
19 described at Attachment B, for a period of five years.

20 THE USAO'S OBLIGATIONS

21 11. If defendant complies fully with all defendant's
22 obligations under this agreement, the USAO agrees:

23 a) To abide by all sentencing stipulations contained in
24 this agreement.

25 b) Except for criminal tax violations (including
26 conspiracy to commit such violations chargeable under 18 U.S.C.
27 § 371), not to further prosecute defendant for violations arising
28 out of defendant's conduct relating to the Model 5979 Type-B

1 Shipping Package described in the stipulated factual basis set
2 forth at Attachment A. Defendant understands that the USAO is
3 free to prosecute defendant for any other unlawful past conduct
4 or any unlawful conduct that occurs after the date of this
5 agreement.

6 BREACH OF AGREEMENT

7 12. If defendant, at any time after the execution of this
8 agreement, knowingly violates or fails to perform any of
9 defendant's agreements or obligations under this agreement ("a
10 breach"), the USAO may declare this agreement breached. If the
11 USAO declares this agreement breached at any time following its
12 execution, and the Court finds such a breach to have occurred,
13 then: (a) if defendant has previously entered a guilty plea,
14 defendant will not be able to withdraw the guilty plea, and (b)
15 the USAO will be relieved of all of its obligations under this
16 agreement.

17 13. Following the Court's finding of a knowing and willful
18 breach of this agreement by defendant, should the USAO elect to
19 pursue any charge that was either dismissed or not filed as a
20 result of this agreement, then:

21 a) Defendant agrees that any applicable statute of
22 limitations is tolled between the date of defendant's signing of
23 this agreement and the commencement of any such prosecution or
24 action.

25 b) Defendant gives up all defenses based on the statute
26 of limitations, any claim of pre-indictment delay, or any speedy
27 trial claim with respect to any such prosecution, except to the
28 extent that such defenses existed as of the date of defendant's

1 signing this agreement.

2 LIMITED MUTUAL WAIVER OF APPEAL

3 14. Defendant gives up the right to appeal any sentence
4 imposed by the Court, and the manner in which the sentence is
5 determined, provided that the sentence is that agreed to in
6 paragraph 9 above. Defendant also gives up the right to bring a
7 post-conviction attack on the conviction or sentence, except a
8 post-conviction attack based on a claim of ineffective assistance
9 of counsel, a claim of newly discovered evidence, or an
10 explicitly retroactive change in the applicable Sentencing
11 Guidelines, sentencing statutes, or statutes of conviction.

12 15. The USAO gives up its right to appeal the sentence,
13 provided that the sentence is that agreed to in paragraph 9
14 above.

15 COURT NOT A PARTY

16 16. The Court is not a party to this agreement and need not
17 accept any of the USAO's sentencing recommendations or the
18 parties' stipulations. Even if the Court ignores any sentencing
19 recommendation, finds facts or reaches conclusions different from
20 any stipulation, and/or imposes any sentence up to the maximum
21 established by statute, defendant cannot, for that reason,
22 withdraw defendant's guilty plea, and defendant will remain bound
23 to fulfill all defendant's obligations under this agreement. No
24 one -- not the prosecutor, defendant's attorney, or the Court --
25 can make a binding prediction or promise regarding the sentence
26 defendant will receive, except that it will be within the
27 statutory maximum.

NO ADDITIONAL AGREEMENTS

17. Except as set forth herein, there are no promises, understandings or agreements between the USAO and defendant or defendant's counsel. Nor may any additional agreement, understanding or condition be entered into unless in a writing signed by all parties or on the record in court.

PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING


18. The parties agree and stipulate that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding.

This agreement is effective upon signature by defendant and an Assistant United States Attorney.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF CALIFORNIA

THOMAS P. O'BRIEN
United States Attorney


ALKA SAGAR
Assistant United States Attorney
Deputy Chief, Major Frauds Section

9-5-08
Date

As an authorized representative of defendant FOSS THERAPY SERVICES, INC., I have read this agreement and carefully discussed every part of it with defendant's attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. Defendant's attorney has advised me of defendant's rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of

1 entering into this agreement. No promises or inducements have
2 been given to me or defendant other than those contained in this
3 agreement. No one has threatened or forced me or defendant in
4 any way to enter into this agreement. Finally, I am satisfied
5 with the representation provided by defendant's attorney in this
6 matter.

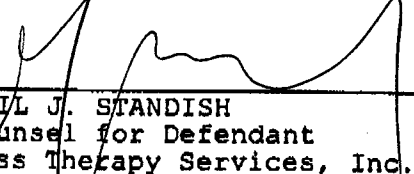
7 
8 _____

8-05-08

Date

9 Authorized Corp. Representative
10 of defendant FOSS THERAPY SERVICES, INC.

11 I am defendant's attorney. I have carefully discussed every
12 part of this agreement with the authorized representative of
13 defendant. Further, I have fully advised the authorized
14 representative of defendant's rights, of possible defenses, of
15 the sentencing factors set forth in 18 U.S.C. § 3553(a), of the
16 relevant Sentencing Guidelines provisions, and of the
17 consequences of entering into this agreement. To my knowledge,
18 the decision of defendant and its authorized representative to
19 enter into this agreement is an informed and voluntary one.

20 
21 _____
22 GAIL J. STANDISH
23 Counsel for Defendant
24 Foss Therapy Services, Inc.

8-6-08

Date

1 ATTACHMENT A

2 FACTUAL BASIS

3 Defendant Foss Therapy Services, Inc., ("FTS"), was a
4 company engaged in, among other things, the business of
5 installing, removing, and servicing medical devices that
6 contained the radioactive and hazardous materials Cobalt-60 and
7 Cesium 137. Co-defendant Richard D. Foss was the president of
8 FTS ("Foss"). Co-defendant Joseph S. Shepherd was the vice
9 president of FTS ("Shepherd").

10 FTS owned a 5979 Model Type-B shipping package ("5979
11 Package") that was regulated by the United States Nuclear
12 Regulatory Commission ("USNRC") and the United States Department
13 of Transportation ("USDOT"). The USNRC had issued a certificate
14 of compliance ("COC") for the 5979 Package, which permitted the
15 use of the 5979 Package for transportation of the USNRC-regulated
16 materials Cobalt-60 and Cesium 137. The COC issued for the 5979
17 Package described the required configuration of the package and
18 set forth required inspection and maintenance procedures. The
19 COC also stated that during each inspection, the party conducting
20 the inspection was required to note on an inspection check list
21 any discrepancy between the 5979 Package and the configurations
22 in the COC.

23 The USNRC issued a general license to a company called
24 Source Protection and Equipment Company ("SPEC"), which permitted
25 SPEC to transport byproduct, source, or special material in the
26 5979 Package. Shepherd worked as an independent contractor for
27 SPEC. While working for SPEC, Shepherd was authorized to conduct
28 required inspection and maintenance procedures on the 5979

1 Package. Foss did not have a license issued by the USNRC to
2 transport USNRC-regulated materials or to conduct required
3 inspections and maintenance procedures on the 5979 Package.

4 On or about May 19, 2004, Shepherd and Foss were together in
5 South Pasadena, California. Shepherd was scheduled to conduct an
6 inspection on the 5979 Package, in San Antonio, Texas, the next
7 day. Shepherd and Foss agreed that: (1) Foss would travel to San
8 Antonio, Texas in Shepherd's place; (2) complete an inspection of
9 the 5979 Package; and (3) complete and submit related paperwork,
10 including an inspection check sheet. Shepherd and Foss knew that
11 Foss was not licensed to conduct such an inspection.

12 On or about May 19, 2004, prior to Foss's trip to San
13 Antonio, Texas, Foss witnessed Shepherd complete and sign a bill
14 of lading that falsely stated "the contents of this
15 consignment . . . are in all respects in proper condition for
16 transport by highway according to applicable [regulations]." At
17 that time, Foss and Shepherd knew that Shepherd had not and would
18 not inspect the 5979 Package and it was Shepherd's responsibility
19 to conduct those activities for SPEC. Shepherd's false statement
20 on the bill of lading was material to the USNRC and USDOT.

21 On or about May 20, 2004, Foss traveled from the Central
22 District of California, to the Southwest Research Institute
23 ("SWRI"), in San Antonio, Texas. Foss brought with him the false
24 bill of lading signed by Shepherd. Once at SWRI, Foss conducted
25 an unlawful inspection of the 5979 Package. As Foss and Shepherd
26 well knew, Foss was not authorized or trained by SPEC to perform
27 inspections on SPEC's behalf. During the inspection, Foss spoke
28 on the telephone with Shepherd, who was in South Pasadena,

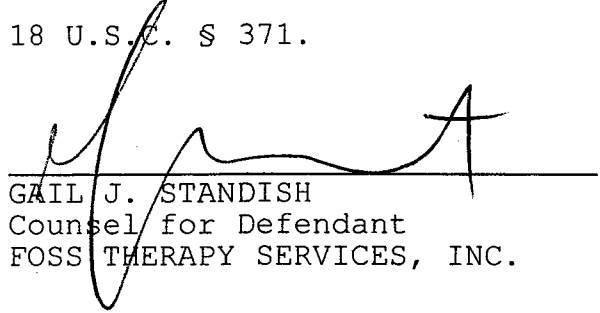
1 California, about how to complete the inspection and inspection
2 checklist. Foss then wrote the word "ok" next to each applicable
3 task on the inspection checklist, indicating, among other things,
4 that he had inspected the end covers and cask screws and that
5 both were in compliance. By writing "ok," Foss made a knowing
6 false statement because: (1) Foss was not authorized by SPEC to
7 conduct this inspection and (2) Foss did not actually inspect the
8 end cover and cask screws in full compliance with the COC. The
9 false statement on the inspection checklist was material to the
10 USNRC and USDOT. Foss then submitted the false bill of lading
11 signed by Shepherd along with the 5979 Package, making it appear
12 as if Shepherd had conducted the inspection. The 5979 Package
13 then was used to transport Cobalt-60 to Mexico.

14
15 As an authorized representative of defendant FOSS THERAPY
16 SERVICES, INC. ("defendant"), I have read the statement of facts
17 and carefully discussed every part of it with defendant's
18 attorney. I stipulate and agree that, based on the evidence
19 developed during this investigation, the statement of facts is
20 accurate and correct, and constitutes a factual basis for the
21 entry of a guilty plea to one count of conspiring to make a
22 materially false statement, in violation of 18 U.S.C. § 371.

23
24 Richard D. Foss President
25 Authorized Corp. Representative
26 of defendant FOSS THERAPY SERVICES, INC.

8-5-2008
Date

1 I am defendant's attorney. I have carefully discussed every
2 part of this statement of facts with the authorized
3 representative of defendant and agree that it constitutes a
4 factual basis for defendant's guilty plea to one count of
5 conspiring to make a materially false statement, in violation of
6 18 U.S.C. § 371.

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8 
9 GAIL J. STANDISH
10 Counsel for Defendant
11 FOSS THERAPY SERVICES, INC.

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Date Aug 5, 2008

ATTACHMENT B

SCOPE OF WORK

Pursuant to California Radioactive Material License Number 6875-36, Foss Therapy Services ("FTS") is licensed to perform maintenance, repair, installation and removal of a variety of irradiators and teletherapy units. The license also permits FTS to package certain radioactive materials. FTS does not have an NRC license.

FTS agrees to the following conditions on its activities that arguably fall within the scope of work permitted under License No. 6875-36:

- (1) Item 9.M refers to the "packaging of radioactive sources" but is not specifically limited to Type A quantities. FTS agrees to limit its packaging activities to Type A quantities only.
- (2) Item 19 states: "Teletherapy sources shall be transported only in DOT approved shipping containers." FTS agrees not to perform activities permitted by this Item.
- (3) FTS agrees that FTS, Richard Foss, and Joseph Shepherd will not perform packaging or shipping of Type B materials. FTS intends to contract with companies that have a qualified USNRC Part 71 Quality Assurance Program. FTS, Richard Foss, and Joseph Shepherd will not participate in packaging or shipping of Type B material sources -- that is, a device would be prepared, leak tested, monitored and packaged into a Type B container by others.

CERTIFICATE OF SERVICE

I, ALEJANDRA SOTO, declare:

That I am a citizen of the United States and resident or employed in Los Angeles County, California; that my business address is the Office of United States Attorney, United States Courthouse, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of eighteen years, and am not a party to the above-entitled action;

That I am employed by the United States Attorney for the Central District of California who is a member of the Bar of the United States District Court for the Central District of California, at whose direction I served a copy:

PLEA AGREEMENT FOR DEFENDANT FOSS THERAPY SERVICES, INC.

service was:

Gail Standish, Esq.
Winston and Strawn
333 South Grand Ave., 38th Floor
Los Angeles, CA, 90071-1543

☐ Placed in a closed envelope, for collection and interoffice delivery addressed as follows:

☒ Placed in a sealed envelope for collection and mailing via United States Mail addressed as follows:

☐ By hand delivery addressed as follows:

☐ By facsimile as follows:

☐ By messenger as follows:

☐ By federal express as follows:

This Certificate is executed on September 15, 2008, at Los Angeles, California.

I certify under penalty of perjury that the foregoing is true and correct.


ALEJANDRA SOTO